IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16-4-2007

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.P.No.9880 of 2007 & M.P.No.1 of 2007

Dr. Annabelle Rajaseharan ... Petitioner

Vs.

1. The Secretary to Government,
Health and Family Welfare Department,
Fort St. George, Chennai - 600 009.

2. The Director of Medical Education,
Kilpauk, Chennai - 600 010.

3. The Dean,
Kilpauk Medical College,
Chennai - 600 010. ... Respondents

This writ petition is filed under Article 226 of Constitution of India, with a prayer to issue a writ of certiorarified mandamus to call for the records on the file of the 2nd respondent in proceedings Letter No.L.Dis.92795/E1/2/06 dated 3.3.2007 and quash the same and consequently direct the respondents to relieve the petitioner as deemed to have voluntarily retired from service with effect from 27.2.2007 and settle all terminal benefits.

For Petitioner : Mr.V.Karthikeyan

For Respondents : Mr.K.Balakrishnan,
Addl. Govt. Pleader

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By consent of both sides, the writ petition itself is taken up for final disposal.

2. Petitioner seeks to quash the proceedings of the second respondent dated 3.3.2007 and to direct the respondents to relieve her as deemed to have voluntarily retired from service with effect from 27.2.2007 and to settle all terminal benefits.

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3. The brief facts necessary for disposal of the writ petition are as follows.

(a) Petitioner was appointed as Tutor in Pharmacology on 9.7.1984 at Madras Medical College and she was re-designated as Assistant Professor from 8.7.1985 till 18.4.1991. From 19.4.1991, petitionr was promoted as Reader in Pharmacology. On 9.7.1992, petitioner was appointed as Additional Professor of Pharmacology and posted at Chengalpet Medical College. From 1.3.1995 to 29.2.1996 petitioner was appointed as General Manager of Tamil Nadu Medical Service Corporation and thereafter she was appointed as Additional Professor in Clinical Pharmacology at Madras Medical College on 1.3.1996 and the petitioner was posted as Deputy Director of Medical Education on 14.1.2004 and she has been serving as such till 30.11.2006.

(b) On 28.11.2006, petitioner submitted an application for voluntary retirement after completion of more than 22 years of service. In the said notice, petitioner intimated to the respondents that she is giving notice of voluntary retirement from 27.11.2006 ie., three months statutory notice. Petitioner being a Government Employee in the Medical Education Department, she is governed under the Fundamental Rule 56(3). Under the said rule, if a Government Servant intends to go on voluntary retirement on attaining the age of 50 years or on completion of 20 years of qualifying service, can give notice for not less than three months in writing and the period of three months notice shall reckon from the date of receipt of such notice by the appointing authority under FR 56(3)(e). Under Rule 56(f) it is further stated that the appointing authority shall issue orders before expiry of notice either accepting the voluntary retirement or not and otherwise, the Government servant shall be deemed to have been retired voluntarily from service at the end of the period of notice.

(c) It is stated in the affidavit that the petitioner applied for voluntary retirement on 28.11.2006 and also served advance notice to the first respondent, which was duly acknowledged by the respondents on 28.11.2006 itself. According to the petitioner, since the notice was served and the period of three months stood expired on 27.2.2007, and that till the said date no order accepting or rejecting the request of the petitioner was communicated, petitioenr is deemed to be retired voluntarily from 28.2.2007.

(d) However, on 3.3.2007 the second respondent sent an order refusing to permit the petitioner to go on voluntary retirement stating that there is scarcity of Medical Officers in the Medical Department and the petitioner belongs to scarce category. The said reply was served on the petitioner only on 12.3.2007. The said order is challenged in this writ petition on the ground that as per Fundamental Rule 56(f), no order having been communicated to the petitioner, she is deemed to be retired from service.

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4. The learned counsel for the petitioner on the basis of the above statutory provision contended that the impugned order passed by the second respondent is liable to be set aside as the petitioner is deemed to be retired from service from 28.2.2007, as no order either accepting or rejecting the request of the petitioner was communicated by then.

5. The learned Additional Government Pleader submitted that since there was scarcity of Medical Officers in the Medical Department, the petitioner's request for voluntary retirement was not accepted and the same was communicated and the delay has occurred only due to administrative reasons and therefore the impugned order is sustainable.

6. I have considered the rival contentions of the learned counsel for the petitioner as well as the learned Additional Government Pleader.

7. The facts narrated above are not in dispute, i.e., the petitioner has completed more than 50 years of age and 20 years of service on the date when she submitted her application for voluntary retirement. The receipt of three months notice submitted by the petitioner on 28.11.2006 is also not in dispute. The period of three months actually expired on 27.2.2007. However the order rejecting the request of the petitioner was issued by Director of Medical Education only on 3.3.2007, which according to the said order is based on a letter of the Government dated 28.2.2007. Even assuming the letter of the Government is taken as the date of the order, it is only after the expiry of three months statutory notice period. Further, the reason stated in the impugned order for not accepting the petitioner's request to go on voluntary retirement is that there is scarcity of Medical Officers in the Medical Department and the petitioner belongs to scarce category.

8. Under Fundamental Rule 56(e), five conditions are to be verified for rejecting the request of the Government Servant from going on voluntary retirement. They are extracted hereunder,

> "56(e) notice of voluntary retirement given by a Government Servant shall be accepted by the appointing authority, subject to the following conditions being satisfied namely:-
>
> (i) that no disciplinary proceedings are contemplated or pending against the Government Servant concerned for the imposition of a major penalty;
>
> (ii) that no prosecution is contemplated or pending in a Court of Law against the Government servant concerned;
>
> (iii) that a report from the Director of Vigilance and Anti-corruption has been obtained to the effect that no enquiry is contemplated or pending against the Government servant concerned;
>
> (iv) that no dues which cannot be recovered from his Death-cum-Retirement Gratuity are pending to be recovered from the Government servant concerned; and

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(v) that there is no contractual obligation to serve the Government during the period in which the Government servant concerned seeks to retire voluntarily."

From the perusal of the impugned order I could see that the rejection is not based on any one of the five grounds stated in the said rule viz., Rule 56(e)(i) to (v). There is no contractual obligation is in existence between the petitioner and the respondents to serve the Government. The reason stated is only scarcity of Medical Officers in the Medical Department. The said reason does not find a place in the rules as a ground for rejection. Hence I am of the view that the impugned order having been passed not before the expiry of three months notice and also not on the ground mentioned in Rule 56(e)(i) to (v), the impugned order cannot be sustained.

9. The non-communication of any decision insofar as the request for voluntary retirement within three months period and the effect of the same was considered by the Honourable Supreme Court in the decision reported in (2001) 3 SCC 290 (Tek Chand v. Dile Ram), wherein in paragraph 35, the Honourable Supreme Court held thus,

"... there are three categories of rules relating to seeking of voluntary retirement after notice. In the first category, voluntary retirement automatically comes into force on expiry of notice period. In the second category also, retirement comes into force unless an order is passed during notice period withholding permission to retire and in the third category voluntary retirement does not come into force unless permission to this effect is granted by the competent authority. In such a case, refusal of permission can be communicated even after the expiry of the notice period. It all depends upon the relevant rules. In the case decided, the relevant Rule required acceptance of notice by appointing authority and the proviso to the rule further laid down that retirement shall come into force automatically if the appointing authority did not refuse permission during the notice period. Refusal was not communicated to the respondent during the notice period and the Court held that voluntary retirement came into force on expiry of the notice period and subsequent order conveyed to him that he could not be deemed to have voluntary retired had no effect. The present case is almost identical to the one decided by this Court in the aforesaid decision."

I have also considered similar issue in the decision reported in 2006 (2) CTC 318 (S.M.A.Mohamed Yusoof v. The Secretary, Government of T.N.).

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10. Passing an order after the expiry of three months notice period was considered by the Honourable Supreme Court in 1995 Supp (1) SCC 76 (Union of India v. Sayed Muzaffar Mir) and in paragraphs 4 to 6 it is held thus,

> "4. There are two answers to this submission. The first is that both the provisions relied upon by the learned counsel would require, according to us, passing of appropriate order, when the government servant is under suspension (as was the respondent), either of withholding permission to retire or retaining of the incumbent in service. It is an admitted fact that no such order had been passed in the present case. So, despite the right given to the appropriate/competent authority in this regard, the same is of no avail in the present case as the right had not come to be exercised. We do not know the reason(s) thereof. May be, for some reason the authority concerned thought that it would be better to see off the respondent by allowing him to retire.
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> 5. The second aspect of the matter is that it has been held by a three-Judge Bench of this Court in Dinesh Chandra Sangma v. State of Assam ((1977) 4 SCC 441), which has dealt with a pari materia provision finding place in Rule 56(c) of the Fundamental Rules, that where the government servant seeks premature retirement the same does not require any acceptance and comes into effect on the completion of the notice period. This decision was followed by another three-Judge Bench in B.J.Shelat v. State of Gujarat ((1978) 2 SCC 202).
>
> 6. The period of notice in the present case having expired on 21.10.1985, and the first order of removal having been passed on 4.11.1985, we hold that the Tribunal had rightly come to the conclusion that the order of removal was non est in the eye of law."

11. In view of the above cited decisions and having regard to the findings given by me for the two issues that is, expiry of notice period and rejection of the request of the petitioner not being among the grounds enumerated in Rule 56(e)(i) to (v), I am of the view that the impugned order is unsustainable and it is to be treated that the petitioner is deemed to be voluntarily retired from service from 27.2.2007. All the terminal benefits payable to the petitioner shall be calculated and paid to her within a period of one month from the date of receipt of copy of this order.

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The writ petition is ordered with the above directions. No costs. Connected miscellaneous petition is closed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

vr

To
1. The Secretary to Government,
Health and Family Welfare Department,
Fort St. George, Chennai - 600 009.

2. The Director of Medical Education,
Kilpauk, Chennai - 600 010.

3. The Dean, Kilpauk Medical College,
Chennai - 600 010.

+ 1 CC To Mr. V.Karthikeyan, Advocate SR NO.25007

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